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**From:** Welles, Laura [Welles.Laura@epa.gov]  
**Sent:** 12/20/2016 4:30:35 PM  
**To:** Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]  
**Subject:** RE: EPA/Whole Foods Market -- EPA 12-13-16 revisions to Draft CAFO

Got it – I'll send you an email late today with all the \$ info, dispute language, etc.

### Ex. 6 Personal Privacy (PP)

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**From:** Fogarty, Johnpc  
**Sent:** Tuesday, December 20, 2016 11:25 AM  
**To:** Welles, Laura <Welles.Laura@epa.gov>  
**Subject:** Re: EPA/Whole Foods Market -- EPA 12-13-16 revisions to Draft CAFO

We can probably drop that intro phrase then - I don't think there's anything else in the CAFO on that point. Let's just remember it when we get there.

### Ex. 5 AC/AWP/DP

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**From:** Welles, Laura  
**Sent:** Tuesday, December 20, 2016 11:21 AM  
**To:** Fogarty, Johnpc  
**Subject:** RE: EPA/Whole Foods Market -- EPA 12-13-16 revisions to Draft CAFO

I don't think that first bit is necessary – may be getting at unless otherwise specified in the CAFO, this CAFO may be amended...

I'll work on the #'s, dispute resolution language, draft final order (basically already drafted and it's boiler plate). Anything else?

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**From:** Fogarty, Johnpc  
**Sent:** Tuesday, December 20, 2016 11:17 AM  
**To:** Welles, Laura <Welles.Laura@epa.gov>  
**Subject:** Re: EPA/Whole Foods Market -- EPA 12-13-16 revisions to Draft CAFO

OK, missed that in my quick skim. "Unless specifically allowed,..."? What does that mean?

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**From:** Welles, Laura  
**Sent:** Tuesday, December 20, 2016 11:14 AM  
**To:** Fogarty, Johnpc  
**Subject:** RE: EPA/Whole Foods Market -- EPA 12-13-16 revisions to Draft CAFO

Agreed re: tomorrow – I just didn't want to forget to tell you that bit of info.

We have the following provision in the CAFO (see paragraph 46 of the 12-13-16 CAFO).

Unless specifically allowed under the terms of this CAFO, this CAFO may be amended or modified only by written agreement executed by both the EPA and each Respondent.

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**From:** Fogarty, Johnpc  
**Sent:** Tuesday, December 20, 2016 11:00 AM  
**To:** Welles, Laura <[Welles.Laura@epa.gov](mailto:Welles.Laura@epa.gov)>  
**Subject:** Re: EPA/Whole Foods Market -- EPA 12-13-16 revisions to Draft CAFO

OK - that may be better for tomorrow when we're face to face. Also pls make a note that we should include a provision allowing us to extend deadlines by mutual agreement (I don't think we have that).

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**From:** Welles, Laura  
**Sent:** Tuesday, December 20, 2016 10:58 AM  
**To:** Fogarty, Johnpc  
**Subject:** RE: EPA/Whole Foods Market -- EPA 12-13-16 revisions to Draft CAFO

Just as an FYI – with regard to paragraph 42 (remember Suzuki and part 22.18(c)), WFM's region 5 CAFO re: EPCRA (violations at distribution center) had almost exactly the same language.

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**From:** Welles, Laura  
**Sent:** Tuesday, December 20, 2016 10:55 AM  
**To:** Fogarty, Johnpc <[Fogarty.Johnpc@epa.gov](mailto:Fogarty.Johnpc@epa.gov)>  
**Subject:** FW: EPA/Whole Foods Market -- EPA 12-13-16 revisions to Draft CAFO

Here's the latest draft CAFO.

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**From:** Welles, Laura  
**Sent:** Tuesday, December 13, 2016 5:02 PM  
**To:** John Hempfling (CE CEN) <[John.Hempfling@wholefoods.com](mailto:John.Hempfling@wholefoods.com)>; 'Jennifer Hartman King' <[JHartmanKing@kingwilliamslaw.com](mailto:JHartmanKing@kingwilliamslaw.com)>  
**Cc:** Fogarty, Johnpc <[Fogarty.Johnpc@epa.gov](mailto:Fogarty.Johnpc@epa.gov)>  
**Subject:** EPA/Whole Foods Market -- EPA 12-13-16 revisions to Draft CAFO

Hi John and Jenn,

It was good to touch base with you last week to hear your reasoning behind some of WFM's most recent revisions to the draft CAFO. It helped us to better understand where WFM is coming from re: wanting flexibility, time, and less contact with EPA. We heard your concerns and believe the attached draft CAFO with EPA's latest revisions strikes a good balance between the needs of EPA and WFM. As you will find, we accepted most of your proposed 12-1-16 revisions. We've included a detailed description of the more substantive changes, including our rationale. If time allows, we would also like to go over these proposed revisions during our call on Thursday – but if not, it would still be a good idea to discuss them before you all turn back a new draft.

EPA's proposed changes:

- Paragraph 8, first sentence – Per WFM's recent edits, we removed the Statutory and Regulatory Background section. Our edit to this sentence aims to connect the statute with the implementing regulations.

- Paragraphs 18 and 19 were combined and reworded – We have gone back and forth on this language a little and the proposed changes seek neutral ground. From our perspective we are trying to reflect the fact that this is at base a voluntary disclosure (which is a key part of the foundation for penalty mitigation).
- Paragraphs 22 and 24 – We understand WFM’s reasoning for wanting language that indicates there was no additional investigation. We changed “without an independent investigation” to “without a nationwide investigation.” We thought it was a more appropriate description of the situation. This is somewhat connected to the point made in Paragraphs 18 and 19.

With regard to “any admission of liability or guilt by Respondents,” we removed the “or guilt” language as this is a civil matter not criminal.

- Paragraph 27, specifically 27(c) and (d) – As we have discussed, EPA hopes WFM’s enhanced hazardous waste program becomes a model for retail grocery stores. We understand that WFM wants both flexibility, as well as keeping many of the specifics confidential per 40 CFR Part 2. Our hope is that these proposed changes reflect what we discussed last week re: flexibility while at the same time providing the public with some overall concept of WFM’s enhanced hazardous waste program. We’re obviously open to different ways to phrase the use of scanners, etc. – in the draft the phrasing is similar to what we discussed on the last call.
- Paragraph 29 – As we explained last week, multi-year agreements typically have reporting on the progress of implementation ranging from quarterly to annually. As you will find, we put the reporting requirement back in, but want to stress to you that we have made it annual only (the least frequent), and the scope is narrow so that it is only associated with WFM’s enhanced hazardous waste management program. Additionally, the first deadline coincides with a reporting requirement under the R6 CAFOs.
- Paragraph 31 – We removed the language here and put the standard certification language. We removed the DD contact because we thought it was repetitive and that paragraph 49 covers notice, etc. (also helps keep the document shorter).
- Paragraphs 38 and 39 – Per our discussion last week, we put stipulated penalties back in the draft CAFO. As we explained last week, stipulated penalties are standard practice in EPA settlements. We reworded a bit by taking out the second sentence of the 11-10-2016 version.
- Paragraph 42 – We put the regulatory language of 22.18(c) here based on recent EAB memos, including the Suzuki memo. Since Suzuki, there have been two other EAB memos that discuss 22.18(c) and what the EAB expects to see in a CAFO. The second sentence was added—this is also from 22.18(c). As you will find, we accepted WFM’s removal of paragraph 53 of the 11-10-2016 version.
- Paragraph 45 – We moved WFM’s proposed Paragraph 49 of the 12-1-2016 version and put it here. As you will find, we deleted the first sentence—this is based on an EAB order in Berry Petroleum Company, et al. where the EAB stated “[i]n exercising its section 22.18(b)(3) authority, the Board has not unilaterally modified a consent agreement or ratified only portions thereof.” We think this still gets to the same place that you were trying to get to with the original language.
- Section VII (Dispute Resolution) – We want to flag this section for further discussion on Thursday. As you’ll find, we did not make any changes to WFM’s revisions, and we are generally amenable to the shorter approach. As drafted, however, there’s the potential for an endless “do loop” for informal discussions, so we’ll need to include something to cover where the parties are not able to resolve a dispute informally.

Please let us know if you have any questions regarding the attached CAFO. We look forward to discussing it more on Thursday.

Also – we are available at 4 pm eastern on Thursday (12/15) if that works better for you.

Thanks,  
Laura

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